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6 Honorable Salvador Mendoza, Jr.

7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF WASHINGTON**

9 ROBERT P. TODD, a single  
10 person,

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON,  
14 WASHINGTON STATE  
15 PATROL, DETECTIVE MAJOR  
16 BAMBINO, DETECTIVE  
17 TONY DOUGHTY,  
18 DETECTIVE JERRY WALKER,  
19 DETECTIVE SGT. JESSE  
20 REGALADO, DETECTIVE  
21 JEFF KERSHAW, JOHN  
22 DOE(S),

Defendants.

NO. 15-00236 SMJ

DEFENDANTS' ANSWER  
AND JURY DEMAND

Defendants, STATE OF WASHINGTON, WASHINGTON STATE  
PATROL, DETECTIVE MAJOR BAMBINO, DETECTIVE TONY  
DOUGHTY, DETECTIVE JERRY WALKER, DETECTIVE SGT. JESSE

DEFENDANTS' ANSWER  
AND JURY DEMAND

1 REGALADO, and DETECTIVE JEFF KERSHAW, in answer to Plaintiff's  
2 complaint, admit, deny and allege as follows:

3 **I. INTRODUCTION**

4 1.1 The allegation is a description of the cause of action, not a short, plain  
5 statement demonstrating the Plaintiff is entitled to relief and therefore  
6 no answer is required. To the extent an answer is deemed necessary,  
7 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled  
8 to any relief whatsoever.

9 1.2 The allegation is a description of the cause of action, not a short, plain  
10 statement demonstrating the Plaintiff is entitled to relief and therefore  
11 no answer is required. To the extent an answer is deemed necessary,  
12 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled  
13 to any relief whatsoever.

14 **II. JURISDICTION AND VENUE**

15 2.1 The allegation is a description of the cause of action, not a short, plain  
16 statement demonstrating the Plaintiff is entitled to relief and therefore  
17 no answer is required. To the extent an answer is deemed necessary,  
18 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled  
19 to any relief whatsoever.

20 2.2 The allegation is a description of the cause of action, not a short, plain  
21 statement demonstrating the Plaintiff is entitled to relief and therefore  
22

1 no answer is required. To the extent an answer is deemed necessary,  
2 the Defendants deny any wrongdoing and/or that the Plaintiff is entitled  
3 to any relief whatsoever.

4 2.3 Admitted in part, denied in part. Defendants admit that the search at  
5 issue in this case occurred in Pend Oreille County. Any allegation or  
6 inference from an allegation not specifically admitted is denied.

7 2.4 Admitted. The State of Washington and Washington State Patrol are  
8 state entities.

9 2.5 Admitted in part, denied in part. Each of the named defendants was an  
10 employee of the Washington State Patrol at the times relevant to this  
11 lawsuit. Any allegation or inference from an allegation not specifically  
12 admitted is denied.

13 2.6 Denied.

14 **III. PARTIES**

15 3.1 Admitted.

16 3.2 Admitted in part, denied in part. The State of Washington is a state  
17 government entity and through various state agencies operates in Pend  
18 Oreille County. Any allegation or inference from an allegation not  
19 specifically admitted is denied.

20 3.3 Admitted.

21 3.4 Admitted in part, denied in part. Each of the named defendants was an  
22

1 employee of the Washington State Patrol at the times relevant to this  
2 lawsuit. Any allegation or inference from an allegation not specifically  
3 admitted is denied.

4 **IV. CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S**  
5 **CONSTITUTIONAL RIGHTS**

6 4.1 Denied.

7 4.2 Denied.

8 4.3 The allegation calls for a conclusion of law and therefore no answer is  
9 required.

10 4.4 The allegation calls for a conclusion of law and therefore no answer is  
11 required.

12 4.5 Denied.

13 4.6 The allegation calls for a conclusion of law and therefore no answer is  
14 required.

15 4.7 The allegation calls for a conclusion of law and therefore no answer is  
16 required.

17 4.8 The allegation calls for a conclusion of law and therefore no answer is  
18 required.

19 4.9 Denied.

20 4.10 The allegation calls for a conclusion of law and therefore no answer is  
21 required.  
22

**V. CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S  
CONSTITUTIONAL RIGHTS PURSUANT TO WASHINGTON  
STATE'S CONSTITUTION**

5.1 Denied.

5.2 Denied.

5.3 The allegation calls for a conclusion of law and therefore no answer is required.

5.4 The allegation calls for a conclusion of law and therefore no answer is required.

5.5 Denied.

5.6 The allegation calls for a conclusion of law and therefore no answer is required.

5.7 The allegation calls for a conclusion of law and therefore no answer is required.

5.8 The allegation calls for a conclusion of law and therefore no answer is required.

5.9 Denied.

5.10 The allegation calls for a conclusion of law and therefore no answer is required.

5.11 Denied.

**VI. CAUSE OF ACTION FOR CONSPIRACY TO DEPRIVE PERSON  
OF EQUAL PROTECTION OF LAW**

6.1 Denied.

- 1        6.2    Denied.
- 2        6.3    The allegation calls for a conclusion of law and therefore no answer is
- 3                required.
- 4        6.4    The allegation calls for a conclusion of law and therefore no answer is
- 5                required.
- 6        6.5    Denied.
- 7        6.6    The allegation calls for a conclusion of law and therefore no answer is
- 8                required.
- 9        6.7    The allegation calls for a conclusion of law and therefore no answer is
- 10              required.
- 11       6.8    The allegation calls for a conclusion of law and therefore no answer is
- 12              required.
- 13       6.9    The allegation calls for a conclusion of law and therefore no answer is
- 14              required.
- 15       6.10   Denied.
- 16       6.11   The allegation calls for a conclusion of law and therefore no answer is
- 17              required.
- 18       6.12   The allegation calls for a conclusion of law and therefore no answer is
- 19              required.
- 20       6.13   Denied.

**VII. CAUSE OF ACTION FOR VIOLATION OF THE WASHINGTON  
STATE CIVIL RIGHTS ACT RCW 49.60.030**

7.1 Denied.

7.2 Denied.

7.3 The allegation calls for a conclusion of law and therefore no answer is required.

7.4 The allegation calls for a conclusion of law and therefore no answer is required.

7.5 Denied.

7.6 The allegation calls for a conclusion of law and therefore no answer is required.

7.7 The allegation calls for a conclusion of law and therefore no answer is required.

7.8 The allegation calls for a conclusion of law and therefore no answer is required.

7.9 Denied.

7.10 Denied.

7.11 Denied.

7.12 The allegation calls for a conclusion of law and therefore no answer is required.

7.13 The allegation calls for a conclusion of law and therefore no answer is required.

1 7.14 Denied.

2 **VIII. CAUSE OF ACTION FOR MALICIOUS INJURY TO PROPERTY**

3 8.1 Denied.

4 8.2 Denied.

5 8.3 The allegation calls for a conclusion of law and therefore no answer is  
6 required.

7 8.4 Denied.

8 8.5 The allegation calls for a conclusion of law and therefore no answer is  
9 required.

10 8.6 The allegation calls for a conclusion of law and therefore no answer is  
11 required.

12 8.7 The allegation calls for a conclusion of law and therefore no answer is  
13 required.

14 8.8 Denied.

15 8.9 Denied.

16 8.10 Denied.

17 **IX. CAUSE OF ACTION PURSUANT TO AGENCY THEORY**

18 9.1 Denied.

19 9.2 Denied.

20 9.3 The allegation calls for a conclusion of law and therefore no answer is  
21 required.

22



1       9.4    The allegation calls for a conclusion of law and therefore no answer is  
2            required.

3       9.5    Denied.

4       9.6    The allegation calls for a conclusion of law and therefore no answer is  
5            required.

6       9.7    The allegation calls for a conclusion of law and therefore no answer is  
7            required.

8       9.8    The allegation calls for a conclusion of law and therefore no answer is  
9            required.

10      9.9    Denied.

11      9.10   Denied.

12      9.11   The allegation calls for a conclusion of law and therefore no answer is  
13            required.

14      9.12   Denied.

15      9.13   The allegation calls for a conclusion of law and therefore no answer is  
16            required.

17       **X.     CAUSE OF ACTION PURSUANT TO THE DOCTRINE OF**  
18                   **RESPONDEAT SUPERIOR**

19      10.1    Denied.

20      10.2    Denied.

21      10.3    The allegation calls for a conclusion of law and therefore no answer is  
22            required.

1 10.4 Denied.

2 10.5 Denied.

3 10.6 The allegation calls for a conclusion of law and therefore no answer is  
4 required.

5 10.7 The allegation calls for a conclusion of law and therefore no answer is  
6 required.

7 10.8 The allegation calls for a conclusion of law and therefore no answer is  
8 required.

9 10.9 Denied.

10 10.10 Denied.

11 10.11 The allegation calls for a conclusion of law and therefore no answer is  
12 required.

13 10.12 Denied.

14 10.13 The allegation calls for a conclusion of law and therefore no answer is  
15 required.

16 **XI. CAUSE OF ACTION FOR NEGLIGENT TRAINING**

17 11.1 Denied.

18 11.2 Denied.

19 11.3 The allegation calls for a conclusion of law and therefore no answer is  
20 required.

21 11.4 Denied.

22

1 11.5 Denied.

2 11.6 The allegation calls for a conclusion of law and therefore no answer is  
3 required.

4 11.7 The allegation calls for a conclusion of law and therefore no answer is  
5 required.

6 11.8 The allegation calls for a conclusion of law and therefore no answer is  
7 required.

8 11.9 Denied.

9 11.10 Denied.

10 11.11 The allegation calls for a conclusion of law and therefore no answer is  
11 required.

12 11.12 The allegation calls for a conclusion of law and therefore no answer is  
13 required.

14 11.13 Denied.

15 11.14 The allegation calls for a conclusion of law and therefore no answer is  
16 required.

17 **XII. CAUSE OF ACTION FOR NEGLIGENT TRAINING**

18 12.1 Denied.

19 12.2 Denied.

20 12.3 The allegation calls for a conclusion of law and therefore no answer is  
21 required.

22

1 12.4 Denied.

2 12.5 Denied.

3 12.6 The allegation calls for a conclusion of law and therefore no answer is  
4 required.

5 12.7 The allegation calls for a conclusion of law and therefore no answer is  
6 required.

7 12.8 The allegation calls for a conclusion of law and therefore no answer is  
8 required.

9 12.9 Denied.

10 12.10 Denied.

11 12.11 The allegation calls for a conclusion of law and therefore no answer is  
12 required.

13 12.12 Denied.

14 12.13 Denied.

15 12.14 The allegation calls for a conclusion of law and therefore no answer is  
16 required.

17 12.15 The allegation calls for a conclusion of law and therefore no answer is  
18 required.

19 **XIII. CAUSE OF ACTION FOR NEGLIGENT SUPERVISION**

20 13.1 Denied.

21 13.2 Denied.

22

1 13.3 The allegation calls for a conclusion of law and therefore no answer is  
2 required.

3 13.4 Denied.

4 13.5 Denied.

5 13.6 The allegation calls for a conclusion of law and therefore no answer is  
6 required.

7 13.7 The allegation calls for a conclusion of law and therefore no answer is  
8 required.

9 13.8 The allegation calls for a conclusion of law and therefore no answer is  
10 required.

11 13.9 Denied.

12 13.10 Denied.

13 13.11 The allegation calls for a conclusion of law and therefore no answer is  
14 required.

15 13.12 Denied.

16 13.13 The allegation calls for a conclusion of law and therefore no answer is  
17 required.

18 13.14 The allegation calls for a conclusion of law and therefore no answer is  
19 required.

20 13.15 The allegation calls for a conclusion of law and therefore no answer is  
21 required.

22

**XIV. RELIEF SOUGHT**

14.1 The allegation is a prayer for relief and therefore no answer is required.

14.2 The allegation is a prayer for relief and therefore no answer is required.

14.3 The allegation is a prayer for relief and therefore no answer is required.

14.4 The allegation is a prayer for relief and therefore no answer is required.

14.5 The allegation is a prayer for relief and therefore no answer is required.

14.6 The allegation is a prayer for relief and therefore no answer is required.

14.7 The allegation is a prayer for relief and therefore no answer is required.

14.8 The allegation is a prayer for relief and therefore no answer is required.

14.9 The allegation is a prayer for relief and therefore no answer is required.

14.10 The allegation is a prayer for relief and therefore no answer is required.

1 14.11 The allegation is a prayer for relief and therefore no answer is  
2 required.

3 14.12 The allegation is a prayer for relief and therefore no answer is  
4 required.

5 **XV. AFFIRMATIVE DEFENSES**

6 By Way of FURTHER ANSWER and FIRST AFFIRMATIVE  
7 DEFENSE, Defendants allege:

8 1. SERVICE OF PROCESS - The summons and complaint were never  
9 properly served upon Defendants.

10 2. VENUE - The county in which this action was commenced is not the  
11 proper venue for said action. Venue is most appropriate before the Eastern  
12 District of Washington Federal District Court.

13 3. JURISDICTION – The Eastern District of Washington Federal  
14 District Court is the proper jurisdiction for the claims alleged in this suit.

15 4. COMPARATIVE FAULT - The injuries and damages, if any,  
16 claimed by Plaintiff were proximately caused or contributed to by the fault of  
17 Plaintiff as defined by RCW 4.22.015.

18 5. FAILURE TO STATE A CLAIM - Plaintiff has failed to state a  
19 claim upon which relief may be granted.

20 6. QUALIFIED IMMUNITY - The claims alleged under 42 U.S.C. §  
21 1983 against the state employees are barred by the doctrine of qualified immunity.  
22

The state law claims against the state employees are barred by state law qualified immunity.

7. COMMISSION OF A FELONY - This action is barred as provided by RCW 4.24.420 on the basis that Plaintiff was engaged in the commission of a felony at the time of the injury/death and the felony was a proximate cause of the injury or death.

WHEREFORE, Defendants pray that Plaintiff's complaint be dismissed with prejudice and that Plaintiff take nothing by his complaint and that Defendants be allowed their costs and reasonable attorney fees herein.

In the event this case proceeds to trial, the Defendants for whom this answer is filed demand that this case be tried to a jury.

DATED this 21st day of September, 2015.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring  
CARL WARRING  
WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants State Of  
Washington, Washington State Patrol,  
Detective Major Bambino, Detective Tony  
Doughty, Detective Jerry Walker,  
Detective Sgt. Jesse Regalado, Detective  
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**PROOF OF SERVICE**

I certify that I electronically filed the above document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Douglas D. Phelps [phelps@phelpslaw1.com](mailto:phelps@phelpslaw1.com)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 21st day of September, 2015, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring  
CARL WARRING  
WSBA No. 27164  
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Attorney for Defendants State Of  
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